

**THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
Indianapolis, Indiana 46204**

**STATE OF INDIANA    )  
                                  )  
COUNTY OF MARION )**

**MALCOLM WALKER,  
Complainant,**

**DOCKET NO. EMra80020157**

**vs.**

**FRUEHAUF DIVISION  
FRUEHAUF CORPORATION,  
Respondent.**

**FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Comes now R. Davy Eaglesfield, III, Hearing Officer for the Indiana Civil Rights Commission ("ICRC"), and enters his Recommended Findings of Fact, Conclusions of Law, and Order ("the recommended decision"), which recommended decision is in words and figures as follows:

**(H.I.)**

And comes now Complainant, Malcolm Walker ("Walker"), by counsel, and files his Objections to said recommended decision, which Objections are in words and figures as follows:

**(H.I.)**

And comes now Respondent, Fruehauf Division, Fruehauf Corporation ("Fruehauf"), by counsel, and files Respondent's Response to Complainant's Objections, which Response is in words and figures as follows:

(H.I.)

And comes now Walker, by counsel, and files his clarification of Objections, which Clarification is in words and figures as follows:

(H.I.)

And comes now ICRC, having held a hearing on Walker's Objections at which arguments of counsel for Walker and counsel for Fruehauf were heard, and having considered the above and being duly advised in the premises, finds and rules as follows:

1. Though the Commission on Human Rights of Indianapolis and Marion County ("HRC") may have had an apparent existence at the time Walker filed his complaint there, the statute upon which its creation was based, IC 22-9-1-12, was unconstitutional. *Indiana University v. Hartwell* \_\_\_\_ Ind. App. \_\_\_\_, 367 N.E.2d 1090 (1977) (transfer denied)..
2. The HRC, at that time, had no legal power to act. *City of Bloomington v. Hudgins* \_\_\_\_ Ind. App. \_\_\_\_, 383 N.E.2d 400 (1978) ("*Hudgins II*") (transfer denied).
3. ICRC's Rule 2.4(A) provides that
  - (a) Complaint filed with a local Commission...created by the authority of the Ind. Stat. Ann. §40-2317(a) [IC 22-9-1-12] shall be deemed a complaint filed with the Indiana Civil Rights Commission as of the date it was received by the local Commission...provided the Complaint conforms to the requirements of the Indiana Civil Rights Law. 910 IAC 1-2-4(B).
4. HRC was not an entity created by the authority of the cited statute because the cited statute was unconstitutional, *Hartwell*, and therefore, granted no legal power to act, *Hudgins I*, *Hudgins II*. In effect, there was no "authority of IC 22-9-1-12".
5. The authority to transfer cases granted by IC 22-9-1-12.1(d) applies only to local agencies created pursuant to IC 22-9-1-12.1. At the time Walker filed his complaints with HRC< it was not such an agency.

6. Walker's reliance on *Fox v. Eaton Co.*, 625 F.2d 716, 22 FEP Case 98 (6<sup>th</sup> Cir.1980) is misplaced. In *Fox* the 6<sup>th</sup> Circuit Court of Appeals, in a 2-1 decision, held that the time for filing an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, was tolled by the filing of a Title VII action in state court, even though that action was ultimately resolved by a determination that state courts lack jurisdiction over Title VII actions. The Sixth Circuit clearly relied on *Fox* in the absence of a controlling decision as to whether federal courts jurisdiction over Title VII actions was exclusive in reaching this result. Here, however, *Hartwell* had been decided when Walker filed his first complaint with HRC and *Hudgins I* had been decided when he filed the second HRC complaint. Indeed, as to the second complaint the ninety (90) day period for filing a complaint with ICRC IC 22-9-1-3(o) had not yet expired when *Hudgins II* was decided. Thus even if the principles announced in *Fox* apply to appropriate cases under the Indiana Civil Rights Law, this not such a case.

**IT IS THEREFORE, ORDERED**

1. The Findings of Fact, Conclusions of Law, and Order recommended by the Hearing Officer in his recommended decision should be, and the same hereby are, adopted by ICRC as its own.

**Dated: August 21, 1981**

**THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
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**FRUEHAUF DIVISION  
FRUEHAUF CORPORATION,  
Respondent.**

**FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Comes now the Respondent, Fruehauf Division, Fruehauf Corporation, by counsel, and files Respondent's Motion to Dismiss for Lack of Jurisdiction, which Motion is in words and figures as follows:

**(H.I.)**

And comes Complainant, Malcolm Walker, by counsel, and files his Motion and Memorandum in Opposition to the Motion to Dismiss of Respondent, which Motion and Memorandum in Opposition are in words and figures as follows:

**(H.I.)**

And comes Respondent, by counsel, and files Respondent's Brief in Answer to Complainant's Memorandum in Support of the Motion in Opposition to Respondent's Motion to Dismiss, which reply is in the words and figures as follows:

**(H.I.)**

And comes R. Davy Eaglesfield, III, Hearing Officer of the Indiana Civil Rights Commission, having considered the above and being duly advised in the premises and recommends the entry of the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

1. On July 19, 1978, Complainant filed a discrimination complaint against Respondent with the Indianapolis-Marion County Human Rights Commission ("hereinafter "HRC"). The Complainant alleged the Complainant was being subjected to harassment and general discriminatory treatment because of his race.
2. On November 3 1978, Complainant filed an amendment to his complaint with the HRC, in which he alleged he had been retaliated against for filing the prior complaint and had been forced to terminate his employment on or about October 6, 1978.
3. After investigation the allegations of the complaint, the HRC, on August 10, 1979, informed Respondent that it had determined there was reasonable cause to believe that Respondent had unlawfully discriminated against the Complainant.
4. On or before February 8, 1980, the HRC transferred said complaints to the Indiana Civil Rights Commission. The Indiana Civil Rights Commission accepted the transfer on February 8, 1980.
5. There is no evidence that on either July 19, 1978 or November 3, 1978, when Complainant filed his Complaints with the HRC, the HRC was a local agency created by an ordinance authorized by IC 22-9-1-12.1(b).

6. The transfer of the Complaint in this case from the HRC to the Indiana Civil Rights Commission did not occur until more than a year had expired after the last Complaint of Complainant had been filed with the HRC. Consequently, the transfer of Complainant's Complaint to the Indiana Civil Rights Commission did not occur until after ninety (90) days of the latest act of discrimination alleged in Complainant's complaint.

7. Complainant did not timely file his complaints with a lawfully created local or state agency.

8. Any Conclusions of Law which should have been deemed a Finding of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. IC 22-9-1-12.1(b) authorizes a "local agency" to transfer a complaint filed with it to the Indiana Civil Rights Commission and requires the Indiana Civil Rights Commission to treat such a complaint as if it had been filed with the Indiana Civil Rights Commission on the date it was filed with the local agency. The "change of venue" and "relationship back" provision do not apply in this case, however, because at the time Walker filed his complaint with the Marion County Human Rights Commission, the Human Rights Commission was not an agency created or empowered under an ordinance enacted pursuant to the authority granted by IC 22-9-1-12.1(b).

2. The burden of proof on the issue of whether an entity is a local agency created by an ordinance enacted pursuant to IC 22-9-1-12.1(b) is on Complainant.

3. Walker's complaints were not timely filed. IC 22-9-1-3(o).

4. The Indiana Civil Rights Commission is without jurisdiction to hear the allegations contained in Walker's complaints.

5. Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

## **ORDER**

The complaints of Walker Transferred to the Indiana Civil Rights Commission by the Marion County Human Rights Commission on February 8, 1980, should be, and the same hereby are, dismissed

**Dated: July 21, 1981**